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 CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA TOW TRUCK
 ASSOCIATION,

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO
 and DOES 1-50,

Defendants.

E-filing
 FILED
 JUL 21 2010
 RICHARD W. WILKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

CRB

Case No. 10 3184

**NOTICE OF REMOVAL OF ACTION UNDER
 28 U.S.C. § 1441(B) (FEDERAL QUESTION) BY
 DEFENDANT CITY AND COUNTY OF SAN
 FRANCISCO [28 U.S.C. § 1441(A); F.R.C.P.
 38(B)]**

Date Action Filed: July 12, 2010
 Trial Date: None Set

Attached Documents:

Exhibit A: Superior Court Register of Actions
Exhibit B: Summons, Complaint, Notice to Plaintiff
Exhibit C: Plaintiff's Petition for Decl. Relief and
 supporting papers

ORIGINAL

Exhibit A

Superior Court of California, County of San Francisco

Case Number: CGC-10-501458

Title: CALIFORNIA TOW TRUCK ASSOCIATION VS. CITY AND COUNTY OF SAN FRANCISCO et al

Cause of Action: OTHER NON EXEMPT COMPLAINTS (Judicial Review)

Generated: Jul-20-2010 3:05 pm PST

[Register of Actions](#) [Parties](#) [Attorneys](#) [Calendar](#) [Payments](#) [Documents](#)**Register of Actions**

Date Range: First Date Jul-12-2010 Last Date Jul-20-2010 (Dates must be entered as MMM-DD-YYYY)

Descending Date Sequence

ALL FILING TYPES

| Date | Proceedings | Document | Fee |
|-------------|--|----------------------|--------|
| JUL-13-2010 | NOTICE OF HEARING ON VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF RE VALIDITY AND ENFORCEMENT OD SAN FRANCISCO POLICE CODE SECTION 3000 ET SEQ. AND 3050, PROOF OF SERVICE, POINTS AND AUTHORITIES, DECLARATION FILED BY PLAINTIFF CALIFORNIA TOW TRUCK ASSOCIATION HEARING SET FOR AUG-19-2010 AT 09:30 AM IN DEPT 302 | | 40.00 |
| JUL-12-2010 | NOTICE TO PLAINTIFF | View | |
| JUL-12-2010 | OTHER NON EXEMPT COMPLAINTS, COMPLAINT FILED BY PLAINTIFF CALIFORNIA TOW TRUCK ASSOCIATION AS TO DEFENDANT CITY AND COUNTY OF SAN FRANCISCO DOES 1 TO 50 SUMMONS ISSUED, JUDICIAL COUNCIL CIVIL CASE COVER SHEET FILED CASE MANAGEMENT CONFERENCE SCHEDULED FOR DEC-10-2010 PROOF OF SERVICE DUE ON SEP-10-2010 CASE MANAGEMENT STATEMENT DUE ON NOV-29-2010 | View | 370.00 |

Exhibit B

SUM-100

**SUMMONS
(CITACION JUDICIAL)**FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

City and County of San Francisco

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

California Tow Truck Association

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Civic Center Courthouse

San Francisco County Superior Court 400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:

(Número del Caso):

DEC-10-501458

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Patrick Whalen 1725 Capitol Avenue, Sacramento CA 95811 (916) 448-2187

CLERK OF THE COURT

DATE:
(Fecha)

JUL 12 2010

Clerk, by
(Secretario)

Deputy
ELIAS P. (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☒ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.80 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):



ORIGINAL

BY FACSIMILE

ORIGINAL

1 BROOKS ELLISON
State Bar No. 122705
2 PATRICK J. WHALEN
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6 Attorneys for Plaintiff

SUMMONS ISSUED
FILED
San Francisco County Superior Court

JUL 12 2010

CLERK OF THE COURT
BY: [Signature] Deputy Clerk

BY FACSIMILE

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 CALIFORNIA TOW TRUCK ASSOCIATION

Case No. **CRB-10-501458**

12 Plaintiff,

13 vs.

14 CITY AND COUNTY OF SAN FRANCISCO
15 and DOES 1-50

16 Defendants.

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF REGARDING VALIDITY AND
ENFORCEMENT OF SAN
FRANCISCO
POLICE CODE SECTIONS 3000 ET
SEQ. AND 3050 ET SEQ.**

(Code of Civ. Proc. §§ 525 and 1060)

17 Date:
18 Time:
19 Dept.:

22 **INTRODUCTION**

23 The City and County of San Francisco (hereafter "the City") has enacted an ordinance
24 that prohibits any person from driving a tow truck within the City without first obtaining a permit
25 from the Chief of Police. Another ordinance prohibits any towing firm from doing business
26 within the City without first obtaining a permit for the firm. This permit scheme is preempted by
27
28

1 state and federal law, and for that reason should be declared invalid. Moreover, the City should
2 be enjoined from enforcing the invalid ordinances.

3 This petition seeks injunctive and declaratory relief as follows:

- 4 1) a declaration that San Francisco Police Code sections 3000 et seq. and 3050 et seq. are
5 invalid because they have been preempted by state and federal law;
- 6 2) a declaration that the City may not constitutionally impound tow trucks alleged to be in
7 violation of the City's permit scheme;
- 8 3) a declaration that the permit scheme is an unconstitutional regulation of interstate
9 commerce;
- 10 4) an injunction prohibiting the City from enforcing the above ordinances;
- 11 5) attorneys fees and costs of suit in this action

12 13 JURISDICTIONAL ALLEGATIONS

14 I. Parties

15 1. Plaintiff CALIFORNIA TOW TRUCK ASSOCIATION ("CTTA") is, and at all times
16 herein mentioned was, a nonprofit corporation organized and existing under the laws of the state
17 of California, with its principal place of business in the County of Riverside, State of California.
18 CTTA represents more than 1,000 towing companies doing business throughout the state of
19 California. Many member companies do business in and around the City and County of San
20 Francisco.

21 2. Defendant CITY AND COUNTY OF SAN FRANCISCO ("the City") is a charter city
22 which enacts municipal ordinances through its duly elected Board of Supervisors.

23 3. Defendants DOES 1 through 50 are City officials and other persons presently unknown
24 who may be responsible for authorizing or enforcing the ordinances challenged herein. Plaintiff
25 will amend this petition when the names and capacities of such persons are known.

26 27 II. Venue

4. Defendant City is located within the City and County of San Francisco, and thus venue is proper in this Court pursuant to Code of Civil Procedure section 394.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

5. The City and County of San Francisco Police Code contains two articles governing permits for the towing industry. Article 30 governs "tow cars" which are defined in the same manner as in the Vehicle Code. (SF Police Code section 3001.) The Vehicle Code defines "tow truck" as follows:

a motor vehicle which has been altered or designed and equipped for, and primarily used in the business of, transporting vehicles by means of a crane, hoist, tow bar, tow line, or dolly or is otherwise primarily used to render assistance to other vehicles. A "roll-back carrier" designed to carry up to two vehicles is also a tow truck. A trailer for hire that is being used to transport a vehicle is a tow truck. "Tow truck" does not include an automobile dismantlers' tow vehicle or a reposessor's tow vehicle.

(Vehicle Code section 615.) In 1988, this section (and others throughout the Vehicle Code) was amended to change "tow car" to "tow truck."

6. San Francisco Police Code section 3000 provides:

No person shall drive or operate a tow car within the City and County of San Francisco without first obtaining a permit from the Chief of Police hereinafter provided.

7. In order to comply with the ordinance, all tow car drivers seeking to "drive or operate within the City" must obtain a permit and are required to have it in their possession at all times and to exhibit it to any peace officer on demand. (SF Police Code sec. 3007.)

8. Obtaining a permit requires payment of various fees and submission of a variety of documents. (SF Police Code secs. 3002, 3003.)

9. The Chief of Police shall issue a permit to an applicant unless the applicant has been convicted of certain theft or vehicle crimes within the past four years, or has "acted in violation of" those crimes, or has intentionally falsified any statement in the application. (SF Police Code sec. 3004.)

10. The permits are valid for a period of one year, and may then be renewed upon payment of additional fees. (SF Police Code sec. 3008.)

11. Any violation of the statutory scheme for tow car drivers is a misdemeanor punishable by a fine of up to \$500, or incarceration for up to six months in jail, or both. (SF Police Code sec. 3012.)

12. Article 30.1 of the City and County of San Francisco Police Code governs "tow car firms." A tow car firm is defined as

Any person, firm, partnership, association, corporation, or any other group or combination acting as a unit, excepting the United States, the State of California, and any political subdivision of either thereof, engaged in the business of transporting, removing, or storage of motor vehicles, including the owner/operator of any tow car as herein defined.

(SF Police Code sec. 3051.) That same section defines a tow car in terms virtually identical to the definition of "tow truck" in Vehicle Code section 615.

San Francisco Police Code section 3050 provides, in pertinent part:

No person shall engage in or conduct business as a tow car firm within the City and County of San Francisco without first obtaining a permit from the Chief of Police as hereinafter provided.

11. Obtaining a tow car firm permit requires payment of various fees and submission of a variety of documents. (SF Police Code secs. 3052, 3053, 3058.)

12. Pursuant to San Francisco Police Code section 3054, the Chief of Police shall issue a tow car firm permit to an applicant unless he finds:

(1) Applicant does not possess or cannot obtain the minimum amount of bodily injury and/or property damage insurance as required by the Chief of Police rules; or

(2) The applicant does not possess the requisite tow car equipment or facilities reasonably necessary to operate a tow car business in such a manner as to adequately protect vehicles of the public that are towed and stored from damage or theft; or

(3) The applicant has been convicted of theft, petty theft, theft of a vehicle, breaking or removing vehicle parts, malicious mischief to vehicle, check fraud,

1 credit card fraud, driving under the influence of alcohol or drugs, vehicular
2 manslaughter, reckless driving bodily injury, any sex offense which would cause
3 the applicant to be registered as a sex offender, any unlawful carrying, use or
4 possession of a firearm, any assault or battery (misdemeanor or felony),
kidnapping, arson, extortion, murder, possession of alcoholic beverage, opened
alcohol container, marijuana, or narcotic drug while driving, bailee tampering; or

5 (4) The applicant has knowingly falsified any statement contained in his
6 application, or has knowingly omitted information in his application which could
result in a denial of the permit; or

7 (5) The applicant does not possess or cannot obtain an FDIC-authorized bank
8 credit card machine.

9 13. The tow car firm permits must be displayed in a prominent place within the business.
10 (SF Police Code sec. 3055.) In addition, every tow car firm must also display a brochure
11 summarizing California law, available in three languages, and must maintain at least 50 copies of
12 the brochure on the premises at all times. (SF Police Code sec. 3055.2, subd. (c).)

13 14. Tow car firm permits may be suspended or revoked by the Chief of Police for a variety of
14 reasons, including charging "unauthorized fees," or employing any person as a tow car operator
15 who has not been issued a valid permit by the San Francisco Police Department. (SF Police
16 Code sec. 3056.)

17 15. The tow car firm permits are valid for a period on one year, and may then be renewed
18 upon payment of additional fees. (SF Police Code sec. 3062.)

19 16. Any violation of the statutory scheme for tow car firms is a misdemeanor punishable by a
20 fine of up to \$500, or incarceration for up to six months in jail, or both. (SF Police Code sec.
21 3064.)

22 17. On or about March 30, 2010, a tow car was impounded by the San Francisco Police
23 Department for failing to have a permit. On or about April 4, 2010, another tow car which was
24 towing a vehicle was also impounded by the San Francisco Police Department for failing to have
25 a permit.

26
27 **FIRST CAUSE OF ACTION**
28

(Violation of Supremacy Clause)

18. Plaintiff hereby incorporates by reference all of the foregoing paragraphs as if fully set forth herein.

19. The Federal Aviation Administration Authorization Act of 1994 (the FAAAA) is codified at 49 U.S.C. sections 14501 et seq.

20. The FAAA prohibits any state or any political subdivision thereof from enacting or enforcing any law or regulation related to the price, route, or service of a motor carrier.

21. All CTTA members are motor carriers.

22. The City's permit scheme directly impacts the price, route, and service of the motor carrier members of CTTA, and is therefore preempted by federal law pursuant to the supremacy clause of Article VI of the United States Constitution.

SECOND CAUSE OF ACTION

(State Law Preemption)

23. Plaintiff hereby incorporates by reference all of the foregoing paragraphs as if fully set forth herein.

24. Vehicle Code section 21 prohibits any municipality from enacting or enforcing any ordinance on the matters covered by the Vehicle Code unless expressly authorized by the Vehicle Code.

25. The City's permit scheme directly relates to matters covered by the Vehicle Code. There is no statutory authorization for the type of regulation of the towing industry encompassed by the City's permit scheme, and the entire scheme is therefore preempted by state law.

THIRD CAUSE OF ACTION

(State Law Preemption)

26. Plaintiff hereby incorporates by reference all of the foregoing paragraphs as if fully set forth herein.

1 27. Chapter 1 of Part 1.55 of Division 2 of the Revenue and Taxation Code is entitled "Motor
 2 Carriers of Property Permit Fee." Section 7233 of that Chapter provides that no city or city and
 3 county shall assess, levy, or collect an excise or license tax of any kind, character, or description
 4 whatever upon the transportation business conducted by any for-hire motor carrier of property.

5 28. The City's permit scheme purports to levy and collect a variety of business taxes and fees
 6 in connection with the application and renewal of the various permits required under the scheme.
 7 These taxes are preempted by state law.

8 9 **FOURTH CAUSE OF ACTION**

10 **(Illegal Seizure)**

11 29. Plaintiff hereby incorporates by reference all of the foregoing paragraphs as if fully set
 12 forth herein.

13 30. The Fourth Amendment to the United States Constitution prohibits the unreasonable
 14 seizure of persons and property. Article 1, section 13 of the California Constitution also
 15 prohibits the unreasonable seizure of persons and property.

16 31. The City has begun impounding tow cars allegedly in violation of the permit scheme.
 17 Such impounds are not authorized by any law and are unreasonable and therefore
 18 unconstitutional.

19 20 **FIFTH CAUSE OF ACTION**

21 **(Dormant Commerce Clause)**

22
23 32. Plaintiff hereby incorporates by reference all of the foregoing paragraphs as if fully set
 24 forth herein.

25 33. The City's permit scheme is a form of regulation which benefits California towing firms
 26 to the detriment of firms engaged in interstate commerce.

27 28 **SIXTH CAUSE OF ACTION**

(Complaint for Declaratory Relief)

34. Plaintiff hereby incorporates by reference all of the foregoing paragraphs as if fully set forth herein.

35. The City is actively enforcing the permit scheme on drivers on tow cars and tow car firms.

36. The permit scheme is in violation of state and federal law.

37. Judicial relief is urgently needed to prevent the City from continuing to enforce the illegal permit scheme.

38. As a result of the active enforcement of the permit scheme, many CTTA members are unable to continue or to grow their business within the City and County of San Francisco.

39. As a matter of law, the City lacks the authority to enact or enforce the permit scheme at issue in this case. The permit scheme is in direct conflict with existing state and federal statutes and is therefore unlawful, and Plaintiff has a reasonable likelihood of success on the merits.

40. Plaintiff desires a declaration of its rights and duties with respect to the permit scheme and the City's enforcement thereof. Unless the court issues an appropriate declaration of rights, the parties will not know whether the permit scheme is enforceable, and there will continue to be disputes and controversy surrounding the ordinance, and further litigation will likely result.

41. Such a declaration is necessary and appropriate at this time in order to avoid continued enforcement of the illegal permit scheme which would adversely affect the rights of Plaintiff CTTA and its members. The City's actions will result in irreparable injury and harm to CTTA and its members including the denial of the protection of the laws regarding their industry. The loss of such rights cannot be compensated fully by damages or other forms of legal relief. Plaintiff has no plain, speedy or adequate remedy at law, and for that reason, he seeks injunctive relief.

SEVENTH CAUSE OF ACTION

(Complaint for Injunctive Relief)

42. Plaintiff hereby incorporates by reference all of the foregoing paragraphs as if fully set forth herein.

43. All enforcement of the illegal permit scheme must be stopped in order to adequately protect the rights of Plaintiff and its members. Unless defendant is restrained by a preliminary and permanent injunction from enforcing the permit scheme, plaintiff will suffer great and irreparable injury in that its members will suffer immeasurable harm to their businesses. Plaintiff has no adequate remedy at law because pecuniary damages would not afford adequate relief because the damage is impossible to measure. The competitive advantages that may be gained or loss by compliance with the permit scheme are too large and numerous to accurately account.

44. Plaintiff and its members have a right to be free from unconstitutional and otherwise illegal ordinances. The loss of such rights cannot be compensated fully by damages or other forms of legal relief. Plaintiff has no plain, speedy or adequate remedy at law, and for that reason, he seeks injunctive relief.

///

///

CONCLUSION

WHEREFORE, Plaintiff CTTA respectfully prays that:

1. This Court issue a declaration that the City's permit scheme is preempted by federal law;
2. This Court issue a declaration that the City's permit scheme is preempted by state law;
3. This Court issue a declaration that the impounds of tow cars alleged to be in violation of the City's permit scheme is unconstitutional;
4. This court issue a declaration that the permit scheme is an unconstitutional regulation of interstate commerce;
5. This Court issue a preliminary and permanent injunction prohibiting Defendant from enforcing the permit scheme;
6. Plaintiff be awarded attorneys fees and costs of suit incurred in this action.

THE LAW OFFICES OF BROOKS ELLISON

Dated: *July 8 2010*


PATRICK J. WHALEN

**Attorneys for Plaintiff
CALIFORNIA TOW TRUCK
ASSOCIATION**

CASE NUMBER: CGC-10-501458 CALIFORNIA TOW TRUCK ASSOCIATION VS. CITY AND COL

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: DEC-10-2010

TIME: 9:00AM

**PLACE: Department 212
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

**IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL.
(SEE LOCAL RULE 4)**

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.8, 8.0 C and 10 D re stipulation to commissioners acting as temporary judges

Exhibit C

1 BROOKS ELLISON
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2 PATRICK J. WHALEN
State Bar No. 173489
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E-mail: attorneys@ellisonlawoffices.com
6

7 Attorneys for Plaintiff
8
9

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12

13 CALIFORNIA TOW TRUCK ASSOCIATION
14

15 Plaintiff,
16

17 vs.
18

19 CITY AND COUNTY OF SAN FRANCISCO
20 and DOES 1-50
21

22 Defendants.
23

Case No. CGC-10-501458

**NOTICE OF HEARING ON VERIFIED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
REGARDING VALIDITY AND
ENFORCEMENT OF SAN FRANCISCO
POLICE CODE SECTIONS 3000 ET
SEQ. AND 3050 ET SEQ.**

(Code of Civ. Proc. §§ 525 and 1060)

Date: August 19, 2010
Time: 9:30 a.m.
Dept.: 302

24 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

25 PLEASE TAKE NOTICE that on August 19, 2010, at 9:30 a.m. or as soon thereafter as
26 the matter may be heard in Department 302 of the above-entitled court, located at 400 McAllister
27 Street, San Francisco, California, Petitioner's complaint for declaratory and injunctive relief will
28 be heard.

RECEIVED
CLERK'S OFFICE
10 JUL 15 AM 10:54

1 The complaint will be based on the points and authorities previously filed with this Court,
2 and on such other oral and documentary evidence as may be submitted at the hearing on this
3 matter.

4
5
6 Dated: July 13, 2010

THE LAW OFFICES OF BROOKS ELLISON


PATRICK J. WHALEN

Attorneys for Plaintiff
CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES AND
HEARING OFFICERS IN STATE
EMPLOYMENT

ENDORSED
Superior Court of California

JUL 13 2010

CLERK OF THE COURT

BY: WESLEY RAMIREZ
Deputy Clerk

BROOKS ELLISON
State Bar No. 122705
PATRICK J. WHALEN
State Bar No. 173489
THE LAW OFFICES OF BROOKS ELLISON
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Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CALIFORNIA TOW TRUCK ASSOCIATION

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO
and DOES 1-50

Defendants.

Case No. CGC-10-501458

**POINTS AND AUTHORITIES IN
SUPPORT OF VERIFIED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF REGARDING
VALIDITY AND ENFORCEMENT OF
SAN FRANCISCO POLICE CODE
SECTIONS 3000 ET SEQ. AND 3050 ET
SEQ.**

(Code of Civ. Proc. §§ 525 and 1060)

Date: August 19, 2010
Time: 9:30 a.m.
Dept.: 302

BY FACSIMILE

COPY

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7 Attorneys for Plaintiff
8
9

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 CALIFORNIA TOW TRUCK ASSOCIATION

13 Plaintiff,

14 vs.

15 CITY AND COUNTY OF SAN FRANCISCO
and DOES 1-50

16 Defendants.
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Case No. CGC-10-501458

**POINTS AND AUTHORITIES IN
SUPPORT OF VERIFIED COMPLAINT
FOR DECLARATORY AND
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VALIDITY AND ENFORCEMENT OF
SAN FRANCISCO POLICE CODE
SECTIONS 3000 ET SEQ. AND 3050 ET
SEQ.**

(Code of Civ. Proc. §§ 525 and 1060)

Date: August 19, 2010
Time: 9:30 a.m.
Dept.: 302

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INTRODUCTION

The City and County of San Francisco (hereafter "the City") has enacted an ordinance that prohibits any person from driving a tow truck within the City without first obtaining a permit from the Chief of Police. Another ordinance prohibits any towing firm from doing business within the City without first obtaining a permit for the firm. This permit scheme is preempted by state and federal law, and for that reason should be declared invalid. Moreover, the City should be enjoined from enforcing the invalid ordinances.

STATEMENT OF FACTS

A. Introduction

Plaintiff CALIFORNIA TOW TRUCK ASSOCIATION ("CTTA") is, and at all times herein mentioned was, a nonprofit corporation organized and existing under the laws of the state of California, with its principal place of business in the County of Riverside, State of California. (Hunter Dec., ¶2.) CTTA represents more than 1,000 towing companies doing business throughout the state of California. (Hunter Dec., ¶3.) Many member companies do business in and around the City and County of San Francisco. (Hunter Dec., ¶6.)

Defendant CITY AND COUNTY OF SAN FRANCISCO ("the City") is a charter city which is empowered to enact municipal ordinances through its duly elected Board of Supervisors. (Cal. Const. Art. XI, §§ 2, 3, 5.) Pursuant to this authority, the City has enacted two articles within the City and County of San Francisco Police Code concerning the towing industry. (Whalen Dec. ¶¶ 2-3.)

In summary, these two articles set forth a permit scheme which requires any person any person driving or operating a tow car within the city and any person who engages or conducts business as a tow car firm within the City to obtain a permit. Failure to do so is a misdemeanor. Acquiring a permit requires a rigorous background check and the payment of substantial fees to the City.

///

1 B. The Towing Industry

2 The California Highway Patrol regularly inspects the tow trucks of towing companies throughout
3 the state. (Little Dec. ¶3; Berry Dec. ¶3; Shah Dec. ¶3.) Similarly, their drivers undergo
4 criminal background checks. (*Ibid.*) In addition, all towing companies are required to have a
5 valid motor carrier permit issued by the Department of Motor Vehicles. (Rev. & Tax Code sec.
6 7232; Little Dec. ¶12; Berry Dec. ¶10; Shah Dec. ¶15.) The motor carrier permit cannot be
7 obtained without proof of liability insurance. Furthermore, all tow trucks are required to have
8 "on-hook" insurance coverage with a minimum of \$50,000 for small tow trucks and \$250,000 for
9 larger tow trucks. Tractor trailers are required to have cargo insurance. (Little Dec. ¶12.) In
10 addition, companies with employees are required to have proof of workers compensation
11 insurance in order to obtain a motor carrier permit. (Little Dec. ¶12; Berry Dec. ¶10; Shah Dec.
12 ¶15.)

13 Tow truck drivers are required to stop at truck scales on highways, and are all subject to a
14 random enforcement program implemented by the California Highway Patrol during which they
15 must provide a valid driver's license, registration, and insurance, as well as a safety inspection of
16 their vehicle. (Little Dec. ¶13; Berry Dec. ¶11; Shah Dec. ¶16; Hunter Dec. ¶9.)

17 CTTA members who perform heavy duty towing operating 3 axle trucks in excess of 10,000
18 GVWR (gross vehicle weight rating) or operating vehicle combinations in excess of 40 feet, are
19 subject to Biennial Inspection Terminal ("BIT") by the California Highway Patrol. Heavy duty
20 drivers are also required to enter into a pull notice program with the Department of Motor
21 Vehicles which monitors any activity on their driver license and notifies me of any ticket, or
22 other violation. (Little Dec. ¶13.) They are also required to participate in a drug and alcohol
23 testing program. (Little Dec. ¶13; Hunter Dec. ¶9.) Interstate vehicles are required to have a
24 United States Department of Transportation Number in addition to a CA number accompanying
25 the motor carrier permit. (Little Dec. ¶13.)

26 CTTA makes safety training available to all of its members and their employees. The
27 training programs span several days and include such topics as:
28

1 Safe Driving Practices
 2 Safe Towing Capacity
 3 Hazardous Materials
 4 Appearance & Conduct
 5 Incident Management
 6 Safety during road service
 7 Impounded and stored vehicle protocol
 8 General towing precautions
 9 Release Procedures
 10 Customer Service

11 Our training classes provide both classroom and hands on instruction, and all courses
 12 conclude with a rigorous testing process that training participants must pass before getting
 13 certification. (Hunter Dec. ¶7.)

14 The nature of the towing business is such that companies based in one city will commonly do
 15 business in other cities and counties throughout the state. (See, e.g., Berry Dec. ¶¶1, 2, 4; Shah
 16 Dec. ¶¶1, 2, 4.) Most of CTTA's members conduct towing operations in multiple counties and
 17 in and around dozens of cities throughout California. (Hunter Dec. ¶4.) It is not uncommon for a
 18 tow operator to pick up a vehicle in one city, tow it through one or more cities or counties, and
 19 deliver to a residence, storage yard, salvage lot, or repair facility in a different city or county.
 20 (Hunter Dec. ¶5.)

21 Some of the larger companies perform interstate towing and hauling services, such that their
 22 drivers regularly travel through various states, as well through various cities and counties within
 23 California in the course of their regular duties. (Little Dec. ¶2.) These companies perform
 24 towing services that involve towing or hauling vehicles from within the State of California to
 25 other states. They also perform towing services that involve towing or hauling vehicles from
 26 other states into California. They also tow or haul vehicles out of San Francisco to locations in
 27 other states, and tow or haul vehicles from other states into San Francisco. (Little Dec. ¶4.)

28 Many companies tow cars from one location outside of San Francisco to another location
 outside of San Francisco, but are required to drive through San Francisco to reach their
 destination. They also tow vehicles from locations outside of San Francisco to destinations
 within the City and County of San Francisco, which requires them to drive into San Francisco.

1 They also tow vehicles from locations within San Francisco to destinations outside of San
 2 Francisco, which also requires them to drive into San Francisco. They also occasionally need to
 3 drive through San Francisco in their tow truck or tractor trailer to get to a destination outside of
 4 San Francisco to perform tow services. (Little Dec. ¶5; Berry Dec. ¶4; Shah Dec. ¶4.)

5 C. The Permit Scheme

6 Article 30 governs "tow cars" which are defined in the same manner as in the Vehicle Code.
 7 (SF Police Code section 3001.) The Vehicle Code defines "tow truck" as follows:

8
 9 a motor vehicle which has been altered or designed and equipped for, and
 10 primarily used in the business of, transporting vehicles by means of a crane, hoist,
 11 tow bar, tow line, or dolly or is otherwise primarily used to render assistance to
 12 other vehicles. A "roll-back carrier" designed to carry up to two vehicles is also a
 13 tow truck. A trailer for hire that is being used to transport a vehicle is a tow truck.
 14 "Tow truck" does not include an automobile dismantlers' tow vehicle or a
 15 reposessor's tow vehicle.

16 (Vehicle Code section 615.) In 1988, this section (and others throughout the Vehicle Code) was
 17 amended to change "tow car" to "tow truck."

18 San Francisco Police Code section 3000 provides:

19 No person shall drive or operate a tow car within the City and County of San
 20 Francisco without first obtaining a permit from the Chief of Police hereinafter
 21 provided.

22 In order to comply with the ordinance, all tow car drivers seeking to "drive or operate within the
 23 City" must obtain a permit and are required to have it in their possession at all times and to
 24 exhibit it to any peace officer on demand. (SF Police Code sec. 3007.)

25 Obtaining a permit requires payment of various fees and submission of a variety of
 26 documents. (SF Police Code secs. 3002, 3003.) The Chief of Police shall issue a permit to an
 27 applicant unless the applicant has been convicted of certain theft or vehicle crimes within the
 28 past four years, or has "acted in violation of" those crimes, or has intentionally falsified any
 statement in the application. (SF Police Code sec. 3004.) The permits are valid for a period of
 one year, and may then be renewed upon payment of additional fees. (SF Police Code sec.
 3008.)

Any violation of the statutory scheme for tow car drivers is a misdemeanor punishable by a fine of up to \$500, or incarceration for up to six months in jail, or both. (SF Police Code sec. 3012.)

Article 30.1 of the City and County of San Francisco Police Code governs "tow car firms."

A tow car firm is defined as

Any person, firm, partnership, association, corporation, or any other group or combination acting as a unit, excepting the United States, the State of California, and any political subdivision of either thereof, engaged in the business of transporting, removing, or storage of motor vehicles, including the owner/operator of any tow car as herein defined.

(SF Police Code sec. 3051.) That same section defines a tow car in terms virtually identical to the definition of "tow truck" in Vehicle Code section 615.

San Francisco Police Code section 3050 provides, in pertinent part:

No person shall engage in or conduct business as a tow car firm within the City and County of San Francisco without first obtaining a permit from the Chief of Police as hereinafter provided.

Obtaining a tow car firm permit requires payment of various fees and submission of a variety of documents. (SF Police Code secs. 3052, 3053, 3058.) Pursuant to San Francisco Police Code section 3054, the Chief of Police shall issue a tow car firm permit to an applicant unless he finds:

(1) Applicant does not possess or cannot obtain the minimum amount of bodily injury and/or property damage insurance as required by the Chief of Police rules; or

(2) The applicant does not possess the requisite tow car equipment or facilities reasonably necessary to operate a tow car business in such a manner as to adequately protect vehicles of the public that are towed and stored from damage or theft; or

(3) The applicant has been convicted of theft, petty theft, theft of a vehicle, breaking or removing vehicle parts, malicious mischief to vehicle, check fraud, credit card fraud, driving under the influence of alcohol or drugs, vehicular manslaughter, reckless driving bodily injury, any sex offense which would cause the applicant to be registered as a sex offender, any unlawful carrying, use or possession of a firearm, any assault or battery (misdemeanor or felony),

1 kidnapping, arson, extortion, murder, possession of alcoholic beverage, opened
2 alcohol container, marijuana, or narcotic drug while driving, bailee tampering; or

3 (4) The applicant has knowingly falsified any statement contained in his
4 application, or has knowingly omitted information in his application which could
5 result in a denial of the permit; or

6 (5) The applicant does not possess or cannot obtain an FDIC-authorized bank
7 credit card machine.

8 The tow car firm permits must be displayed in a prominent place within the business. (SF
9 Police Code sec. 3055.) In addition, every tow car firm must also display a brochure
10 summarizing California law, available in three languages, and must maintain at least 50 copies of
11 the brochure on the premises at all times. (SF Police Code sec. 3055.2, subd. (c).)

12 The ordinance authorizes any peace officer to inspect the vehicles of towing firms. (SF
13 Police Code sec. 3059.) However, permit holders have never had their vehicles inspected by the
14 City. (Shah Dec. ¶8.)

15 Tow car firm permits may be suspended or revoked by the Chief of Police for a variety of
16 reasons, including charging "unauthorized fees," or employing any person as a tow car operator
17 who has not been issued a valid permit by the San Francisco Police Department. (SF Police
18 Code sec. 3056.) The tow car firm permits are valid for a period of one year, and may then be
19 renewed upon payment of additional fees. (SF Police Code sec. 3062.)

20 Any violation of the statutory scheme for tow car firms is a misdemeanor punishable by a
21 fine of up to \$500, or incarceration for up to six months in jail, or both. (SF Police Code sec.
22 3064.)

23 D. Tow Trucks Impounded by the City

24 On or about March 30, 2010, a tow car was impounded by the San Francisco Police
25 Department for failing to have a permit. On or about April 4, 2010, another tow car which was
26 towing a vehicle was also impounded by the San Francisco Police Department for failing to have
27 a permit. (Whalen Dec. Exh. C ¶6; see also Shah Dec. ¶13; Hunter Dec. ¶10; Berry Dec. ¶6;
28 Little Dec. ¶7.)

1 The ability of CITA members to conduct their business is adversely affected by the San
 2 Francisco ordinance, because it subjects them to great uncertainty as to whether they are able to
 3 conduct business in, around, and through the City and County of San Francisco. (Hunter Dec.
 4 ¶11.) CITA Members have been harassed and subject to citations, fines, and in some cases the
 5 impound of their tow truck by the City and County of San Francisco for failing to obtain a
 6 permit. (Hunter Dec. ¶10.)

7 E. The Impacts of the Scheme

8 Many towing companies located outside of the City regularly are required to drive into or
 9 through the City as part of the towing services they perform. (Shah Dec. ¶4; Berry Dec. ¶4;
 10 Hunter Dec. ¶6; Little Dec. ¶¶4-5.) Some of these companies have pursued the permit
 11 application process, at a cost of thousands of dollars. (Shah Dec. ¶¶5-7.) Because the towing
 12 companies are required to obtain permits for each driver that conducts business in the City, the
 13 permit scheme has a direct impact on the prices the towing companies. (Shah Dec. ¶10.) The
 14 scheme also impacts the routes and service of these companies, because those drivers who do not
 15 have a permit are forced to take alternate routes around the City. (Shah Dec. ¶11.) This directly
 16 impacts the services these companies can provide to their customers. (Shah Dec. ¶12.) The cost
 17 of obtaining the additional permits has directly limited the ability of these companies to grow
 18 and expand their business. (Shah Dec. ¶14.)

19 Other companies have refused to obtain the required permits. (Berry Dec. ¶7; Little Dec. ¶8.)
 20 This ordinance has directly impacted the routes that the drivers in these companies take when
 21 performing towing services in and around the greater Bay Area. (Berry Dec. ¶8; Little Dec. ¶9.)
 22 It also impacts the services they can provide to their customers, by increasing response times.
 23 (Berry Dec. ¶8; Little Dec. ¶9.)

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ARGUMENT

I. THE CITY'S PERMIT SCHEME IS PREEMPTED BY FEDERAL LAW

A. Principles of Preemption

Article VI of the United States Constitution, known as the Supremacy Clause, provides that “the laws of the United States . . . shall be the supreme Law of the Land; ... anything in the Constitution or Laws of any state to the contrary notwithstanding.” Under the Supremacy Clause, state law that conflicts with federal law is “without effect.” (*Cipollone v. Liggett Group, Inc.* (1992) 505 U.S. 504, 516, 517.)

The United States Supreme Court has recognized that the Federal Aviation Administration Authorization Act of 1994 (the FAAAA) “generally preempts state and local regulation ‘related to a price, route, or service of any motor carrier ... with respect to the transportation of property.’” (*City of Columbus v. Ours Garage & Wrecker Serv., Inc.* (2002) 536 U.S. 424, 429 (“*City of Columbus*”).) Specifically, the FAAAA provides:

“(1) General Rule. Except as provided in paragraphs (2) and (3), a State [or] political subdivision of a State ... may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier ... with respect to the transportation of property.”

(49 U.S.C. § 14501(c)(1).) The phrase “related to” in this general preemption provision is “interpreted quite broadly.” (*Independent Towers of Washington v. Washington* (9th Cir.2003) 350 F.3d 925, 930.) Given this mandate of a broad interpretation, California courts recognize that a state or local regulation is “related to” the price, route, or service of a motor carrier if the regulation “has more than an indirect, remote, or tenuous effect on the motor carrier's prices, routes, or services.” (*CPF Agency Corp. v. Sevel's 24 Hour Towing Service* (2005) 132 Cal.App.4th 1034, 1044.)

The FAAAA contains an exception to the foregoing preemption provision. Specifically, the preemption provision

shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the

1 cargo, or the authority of a State to regulate motor carriers with regard to
2 minimum amounts of financial responsibility relating to insurance requirements
and self-insurance authorization

3 (49 U.S.C. § 14501(c)(2).) This “safety” exception permits states to enact laws that are truly
4 aimed at ensuring the safety of motor vehicles. However, the exception is to be construed
5 narrowly, not broadly. The United States Supreme Court has declared that “Local regulation of
6 prices, routes, or services of tow trucks that is not genuinely responsive to safety concerns
7 garners no exemption from § 14501(c)(1)’s preemption rule.” (*City of Columbus, supra*, 536
8 U.S. 424 at p. 442.) Accordingly, the only state regulation of motor carriers that is permissible is
9 regulation that is “genuinely responsive to safety concerns.” All tow truck operators are motor
10 carriers (see Rev. & Tax. Code §7232, subd. (d)) and therefore any regulations on the towing
11 industry must be limited to the safety exception or they will be deemed invalid under the
12 preemption doctrine.

13 B. The City’s Permit Scheme Is Preempted

14 Because the City’s permit scheme is, on its face, a regulatory scheme that applies to tow
15 truck operators and businesses, it is presumptively preempted by the FAAAA unless it comes
16 within an exception. The only possible exception that is remotely relevant to the instant case is
17 the safety exception discussed above. As will be demonstrated, that exception cannot save the
18 City’s permit scheme.

19 In determining whether a particular law is “genuinely responsive to safety concerns” courts
20 employ a two-step analysis.

21 First, a court must consider any specific expressions of legislative intent in the
22 statute itself as well as the legislative history. Then, it must assess those
23 “purported safety justifications ... in light of the existing record evidence.

24 (*Automobile Club of New York, Inc. v. Dykstra* (2nd Cir. 2008) 520 F.3d 210, 215 (“*Dykstra*”).)

25 Using that analysis, courts have previously found schemes very much like the one presently
26 at issue to be preempted. In *Dykstra*, the Auto Club challenged a New York City tow truck
27 licensing scheme. Like the City’s scheme presently at issue, the New York scheme made it
28 unlawful to “engage in towing without having first obtained a license.” (*Id.* at p. 212.) In

1 addition, the scheme required a towing business to pay fees of \$600 per truck and \$20 per driver,
2 as well as an additional fee for a fingerprint report and criminal record check. (*Ibid.*) As
3 explained by the court

4 Thus, as a whole, the Scheme requires that all tow trucks within the City limits
5 must be licensed by the City or risk seizure. This is true regardless of whether the
6 truck has a vehicle in tow and regardless of whether the truck is actively soliciting
business in the City or simply passing through, such as towing a car from New
Jersey to Long Island.

7 (*Id.* at p. 212.) The Court undertook a review of the legislative history and found that a principal
8 reason for enacting the New York scheme was to prevent "chasing."¹ The court recognized the
9 valid public safety concern with chasing. However, the court noted that:

10
11 the legislative history does nothing to explain whether the City Council intended
12 to subject all tow trucks passing through the City to its Scheme or why such broad
13 regulation was necessary. . . . the City chose to impose its Scheme on all tow
14 trucks that happened to be within its limits, regardless of whether they were
15 chasing. The legislative history is silent on how those trucks not engaged in
chasing, or those merely driving through New York City threaten public safety
and how the expanded definition of "towing" is genuinely responsive to those
concerns.

16 (*Id.* at p. 216.)

17 The court then noted that there was no evidence that the New York scheme was in fact
18 "genuinely responsive" to safety concerns because "the City has never assessed the effectiveness
19 of the Scheme in fighting chasing." (*Ibid.*) Thus, it is not enough for a regulatory scheme to be
20 motivated by a desire for safety; it must have some actual effect on safety. However, the court
21 did not end its analysis there. Even if the New York scheme was effective in addressing the
22 safety concerns with chasing, the regulation was overbroad because it applied to all tow trucks
23 operating in the City, even that were just passing through the city en route to a towing job
24 outside the city. (*Id.* at pp. 216-217.) The Court observed that

25
26
27 ¹ "Chasing" was defined as the practice of towing companies monitoring police radio transmissions in order to learn
28 of accidents and then to race to the scene to secure towing and repair work, which imperils both pedestrian and
vehicular safety and too often results in tragic injury to pedestrians and other motorists. (Dykstra, supra, 520 F.3d at
p. 215.)

1 [a]lthough enforcement of the Scheme under these circumstances might serve to
 2 protect the City resident from high prices, that is not a safety concern. At that
 3 point, it becomes precisely the general industry regulation that Congress intended
 4 to preempt in enacting 49 U.S.C. § 14501(c).

5 (*Id.* at p. 217.) Because the New York scheme was not genuinely responsive to safety concerns,
 6 the court found that it was preempted by the FAAAA.

7 In a similar case, a federal district court found that a city ordinance requiring a permit before
 8 operating any towing vehicle on the streets within the city was preempted. (*Northway Towing,*
 9 *Inc. v. City of Pasadena, Texas* (S.D. Tex. 2000) 94 F.Supp.2d 801, 803 (“*Northway*”).)² The
 10 court rejected the city’s argument that the issuance of permits to tow truck drivers deterred
 11 vehicle theft. More importantly, the court noted that even if it did somehow deter vehicle theft,
 12 the permit scheme “does not ensure that the towing and storage of motor vehicles will be
 13 performed safely.” (*Ibid.*) Thus, the safety exception is limited to ordinances that actually
 14 address the safe performance of towing services, and does not include general anti-crime
 15 measures.

16 Using the analysis of *Dykstra* and *Northway* it is clear that the San Francisco scheme does
 17 not survive preemption. A review of the scheme reveals that it is not concerned with safety at
 18 all. Requiring tow truck drivers to have a City permit (SF Police Code § 3000) does nothing to
 19 increase safety. Requiring permit applicants to list their height, weight, and other identifying
 20 information (SF Police Code § 3002) has no relationship to safety whatsoever. They payment of
 21 various fees to the city (SF Police Code § 3003) simply operates as a revenue generating
 22 mechanism, but does not relate to safety.

23 Denying permits to applicants who have suffered various criminal convictions within the last
 24 four years (SF Police Code § 3004) is not related to safety either. Drivers with clean criminal
 25 records can still be unsafe tow truck operators. The lack of a criminal record says nothing about
 26 the ability of a driver to operate a tow truck safely. Like the argument about deterring vehicle
 27 theft that was rejected in *Northway*, ensuring that tow truck drivers have no recent convictions

28 ² The decision in *Northway* was abrogated on other grounds by *Stucky v. City of San Antonio* (5th Cir.2001) 260
 F.3d 424, which was itself later abrogated by *City of Columbus v. Ours Garage & Wrecker Serv., Inc.* (2002) 536
 U.S. 424.

1 for certain enumerated offenses has no impact on safety. (See *Northway, supra*, 94 F.Supp.2d at
2 p. 803.)

3 Similarly, requiring tow truck drivers to have the permit in their possession at all times (SF
4 Police Code § 3007) does nothing to enhance safety. Likewise, punishing drivers who fail to
5 comply with the permit scheme with misdemeanor convictions (SF Police Code § 3012) does not
6 make the towing industry any safer.

7 The permit scheme as applied to towing firms also is not genuinely responsive to safety
8 concerns. Requiring firms to have permits (SF Police Code § 3050), to display them in their
9 business (SF Police Code § 3055) and to display brochures in multiple languages (SF Police
10 Code § 3055.2, subd. (c)) does not have even the most remote relationship to safety. Denying
11 permits to towing firms based on the business owner's criminal history is dubious at best because
12 the list of crimes that justify denial of a permit (SF Police Code § 3054) or revocation of a permit
13 (SF Police Code § 3056) are seemingly random and have no relationship to safety. A prior
14 conviction for check fraud, for example, sheds no light on whether the person will be a safe
15 towing firm operator. The only ordinance which has a marginal relationship to safety is SF
16 Police Code § 3059 which provides that tow car firm vehicles may be inspected for code and
17 safety violations by any peace officer. However, tow trucks are already subject to rigorous
18 safety inspections independent of the permit scheme. (Little Dec ¶3; Berry Dec. ¶3; Shah Dec.
19 ¶3.) Moreover, while the ordinance provides that tow trucks "may" be inspected, the fact the
20 City does not do any inspections. (Shah Dec. ¶8.)

21 On its face, the permit scheme has no relationship to safety whatsoever. Nor is there any
22 expression of legislative intent regarding the purpose of the scheme. However, the scheme does
23 contain some "findings." Specifically, San Francisco Police Code section 3055.2, subdivision
24 (a) provides:

25 (a) Findings. The Board of Supervisors finds:

26 (i) that there are frequent incidents of illegal towing from private property
27 in San Francisco; and

28 (ii) that there is a significant risk to the safety of residents and visitors
when illegal towing from private property occurs at night; and

(iii) that there is a risk to public health and safety when the vehicles of senior citizens and persons with disabilities are illegally towed from private property; and

(iv) that illegal towing from private property affects vulnerable populations when people of limited economic means are required to pay hundreds of dollars to recover their vehicle, or are subjected to deficiency claims by collection agencies if they could not afford to pick up their vehicle even though the vehicle was illegally towed; and

(v) that the rights of vehicle owners when their vehicle is towed from private property, as described in the California Vehicle Code, are extremely difficult for citizens and visitors to find and understand, especially for non-English speakers or those who speak English as a foreign language; and

(vi) that there are no accessible resources for people to research their rights and responsibilities with respect to private property tows; and

(vii) that requiring tow car firms to provide information on the legal rights of vehicle owners at the time they reclaim their vehicle would be an effective way of informing vehicle owners of their rights under California law when their vehicle is towed from private property; and

(viii) that preventing illegal conduct by tow car operators when towing from private property would reduce the economic burden on residents and visitors by eliminating the need to go to small claims court after a vehicle owner has already paid to reclaim the vehicle; and

(ix) that consistent adherence to legal towing practices will substantially increase the quality of life for residents and the experience of visitors to San Francisco.

These findings were enacted in 2009. The only safety concerns referenced in the findings is the identification of risks to public safety when "illegal towing from private property" occurs at night or when "the vehicles of senior citizens and persons with disabilities are illegally towed from private property." (SF Police Code 3055.2, subd. (a)(ii) and (iii).) All of the other findings relate to consumer protection or other non-safety concerns.

But even the findings related to illegal towing from private property do not bring the scheme within the safety exception to preemption. The risk to public safety is no greater whether a vehicle is towed legally or illegally. From the owner's perspective, he is in the same position either way – stranded without his or her vehicle. Indeed, he is no more or less safe than if his car had been stolen. Moreover, nothing in the permit scheme ensures that illegal towing practices will be deterred. If the City's goal is really to deter illegal towing, the appropriate response is to increase the criminal penalties for that practice. But the permit scheme instead places enormous

1 regulatory and economic burdens on legitimate towing firms, and fails utterly to address the
 2 "safety" concerns which supposedly arise when certain vehicles are illegally towed from private
 3 property.

4 In short, the City's permit scheme does nothing to address safety concerns. Rather, it is
 5 "precisely the general industry regulation that Congress intended to preempt in enacting 49
 6 U.S.C. § 14501(c)." (*Dykstra, supra*, 520 F.3d 210. at p. 217.) Because the scheme is not
 7 "genuinely responsive to safety concerns" the scheme "garners no exemption from §
 8 14501(c)(1)'s preemption rule." (*City of Columbus, supra*, 536 U.S. 424 at p. 442.)
 9 Accordingly, in light binding Supreme Court precedent, the scheme must be declared as invalid
 10 under the Supremacy Clause.

11 12 **II. THE SCHEME IS PREEMPTED BY STATE LAW**

13
14 Vehicle Code section 21 limits the authority of local government to enact ordinances and
 15 regulations without express authority to do so. Specifically, that section provides:

16 Except as otherwise expressly provided, the provisions of this code are applicable
 17 and uniform throughout the State and in all counties and municipalities therein,
 18 and no local authority shall enact or enforce any ordinance on the matters covered
 by this code unless expressly authorized herein.

19 The California Supreme Court has held that "[t]he state's plenary power and its preemption of the
 20 entire field of traffic control are stated in Vehicle Code section 21." (*Rumford v. City of*
 21 *Berkeley*, 31 Cal. 3d 545, 550.) Courts have repeatedly held that the authority to regulate in an
 22 area must be express, not implied. (*Id.* at pp. 551-552; *City of Poway v. City of San Diego*, 229
 23 Cal. App. 3d 847, 858.)

24 The Legislature has already enacted numerous statutes regulating the towing industry. (See,
 25 e.g., Veh. Code sec. 615 [defining tow trucks]; Veh. Code sec. 24605 [lamp requirements for tow
 26 trucks]; Veh. Code sec. 27700 [prescribing equipment for tow trucks]; Veh. Code sec. 34507.5
 27 [requiring a carrier identification number] Veh. Code sec. 22513 [allowing tow trucks to stop on
 28 freeways]; Veh. Code sec. 22651.1 [requiring towing firms to accept cash or credit cards]; Veh.

Code sec. 22658 [governing tows from private property]; Veh. Code sec. 10650 et seq. [prescribing rules for vehicle storage].) Accordingly, pursuant to section 21, no city may enact regulations governing the towing industry unless given express statutory authority to do so.

While a city ordinarily has authority to regulate various matters under its traditional police power, it is settled that this authority is subject to displacement by the general law. (*People v. PKS, Inc.* (1994) 26 Cal.App.4th 400, 406.) "Upon recodification of the Vehicle Code in 1959, the Legislature preempted the *entire field* covered by that code." (*City of Lafayette v. County of Contra Costa* (1979) 91 Cal.App.3d 749, 755.)

A. The City Cannot Regulate Businesses Located Outside the City

The Legislature has granted local governments limited authority to regulate the towing industry. Specifically, Vehicle Code section 21100 provides:

Local authorities may adopt rules and regulations by ordinance or resolution regarding the following matters:

....

(g)(1) Licensing and regulating the operation of tow truck service or tow truck drivers whose principal place of business or employment is within the jurisdiction of the local authority, excepting the operation and operators of any auto dismantlers' tow vehicle licensed under Section 11505 or any tow truck operated by a repossessing agency licensed under Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code and its registered employees.

This statutory provision authorizes municipalities to regulate tow truck firms and drivers "whose principal place of business or employment is within the jurisdiction of the local authority." This language is plain and unambiguous. Moreover, the Supreme Court has held that under Vehicle Code section 21, any "delegation of power to local authorities to enact traffic regulations applicable within their jurisdictions is strictly construed." (*Rumford v. City of Berkeley, supra*, 31 Cal. 3d at p. 550.)

The City's permit scheme, however, is not limited to firms and drivers whose principal place of business or employment is within San Francisco. Quite the contrary, the permit scheme applies to anyone who drives or operates a tow car within the City regardless of their principal place of business or employment. (SF Police Code sec. 3000.) It also applies to any person who

1 engages in or conducts business as a tow car firm within the City, regardless of their principal
2 place of business. (SF Police Code sec. 3050.) Thus, the scheme on its face applies to all tow
3 truck drivers and firms that may enter or pass through the city in the course of their business.
4 The scheme thus far exceeds the limited express grant of authority prescribed by the Legislature.

5 The impact of the city's illegal attempt to regulate towing businesses throughout the state
6 is considerable. While all towing companies have a principal place of business, many provide
7 towing services at great distance from their principal place of business. Their operations are not
8 restricted to only the city or county in which their principal place of business is located. Most of
9 CTTA's members conduct towing operations in multiple counties and in and around dozens of
10 cities throughout California. (Hunter Dec. ¶4.) It is not uncommon for a tow operator to pick up
11 a vehicle in one city, tow it through one or more cities or counties, and deliver to a residence,
12 storage yard, salvage lot, or repair facility in a different city or county. (Hunter Dec. ¶5.) Many
13 CTTA members based in and around the greater Bay Area, but outside of the City and County of
14 San Francisco, regularly conduct towing operations that requires them to drive into and through
15 the City and County of San Francisco. This is true even if the vehicle for which they are
16 providing service is not located within the boundaries of the City and County of San Francisco.
17 (Hunter Dec. ¶6.) Towing firms in Oakland, Bay Point, and even Sacramento must travel into,
18 out of, and through San Francisco in the course of their business. (Berry Dec. ¶¶1, 4; Shah Dec.
19 ¶¶1, 4; Little Dec. ¶¶1, 5.)

20 Some towing firms based outside of San Francisco have applied for the necessary permits for
21 their firm and their drivers, at great expense to their business. (Shah Dec. ¶¶5-7.) Other firms
22 have elected not to obtain a permit, which has directly impacted the routes they take and services
23 they perform. (Berry Dec. ¶¶7-9.) Little Dec. ¶¶8-11.) It has also inhibited the growth of their
24 business within the City. (*Ibid.*)

25 The City's permit scheme exceeds the express grant of authority given by the Legislature
26 because its reach and impact extends to all towing firms and drivers who conduct any business
27 whatsoever in San Francisco, even if they are simply driving through San Francisco to perform
28 towing services in another jurisdiction. Accordingly, this Court must deem the scheme

1 preempted to the extent it purports to regulate tow truck drivers and firms whose principal place
2 of business or employment is outside San Francisco.

3 B. The City Cannot Regulate In A Manner That Is Inconsistent With State Law

4 The city's permit scheme is preempted for another related reason. The Legislature has
5 already acted in the area of tow truck regulation, and the City's permit scheme places great
6 burdens on the business with no tangible benefit to the municipality. The California Supreme
7 Court has explained that State law can preempt local regulation when

8 the subject matter has been partially covered by general law, and the subject is of
9 such a nature that the adverse effect of a local ordinance on the transient citizens
10 of the state outweighs the possible benefit to the municipality.

11 (*People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 485.) In this case,
12 there is near total regulation of the field by the State, and the benefits of local regulation do not
13 outweigh the effect on transient citizens of the state.

14 I. State Law Governing the Towing Industry

15 The Legislature has already enacted numerous statutes regulating the towing industry. For
16 example, tow trucks are defined by the Vehicle Code section 615. Virtually every aspect of tow
17 trucks and their equipment is regulated by state law, including the position of their license plates
18 (Veh. Code sec. 5201, subd. (a)); the requirement of tail and stop lamps (Veh. Code secs. 24600,
19 24603, 24605); the use of flood lamps (Veh. Code sec. 25110), the requirement of warning
20 lamps (Veh. Code sec. 25253); the maintenance of brakes (Veh. Code secs. 26454 subd. (b),
21 26458); the requirement that certain equipment be maintained on the tow truck (Veh. Code sec.
22 27700); the requirement of signage on the tow truck (Veh. Code sec. 27907); and the
23 requirement of safety chains (Veh. Code sec. 29004).

24 In addition to the truck and its equipment, all towing business are required to obtain a motor
25 carrier permit. (Rev. & Tax. Code sec. 7232.) All trucks must display the motor carrier
26 identification numbers on the vehicle. (Veh. Code sec. 34507.5.) The manner in which the
27 towing business conduct their operations is also strictly regulated. For example, statutes specify
28

1 the conditions under which towing can occur in a variety of situations. (Veh. Code secs. 22652-
2 22659.)

3 Moreover, the way towing firms run their operations is heavily regulated. There is a strict
4 prohibition on gifts or commissions (Veh. Code sec. 12110.) They must observe certain speed
5 limitations (Veh. Code sec. 22406.1.) They cannot solicit business except in certain
6 circumstances. (Veh. Code sec. 22513.) They must accept certain forms of payment. (Veh.
7 Code sec. 22651.1.) And they must maintain records of stored vehicles (Veh. Code sec. 10650.)

8 In addition to the foregoing regulations, the vast majority of CTTA members participate in
9 the California Highway Patrol ("CHP") rotation system. (Hunter Dec ¶12.) CHP requires all
10 participants to sign a detailed Tow Service Agreement ("TSA"). (*Ibid.*) Pursuant to the TSA,
11 tow operators must:

- 12 • have a minimum of 3 years experience;
- 13 • participate in a drug and alcohol testing program;
- 14 • maintain minimum staffing levels and hours of operation;
- 15 • meet maximum response times;
- 16 • have an adequate storage facility;
- 17 • meet minimum equipment specifications;
- 18 • allow CHP to inspect all trucks at least one per year;
- charge reasonable rates;
- maintain minimum levels of insurance;
- adhere to a code of conduct;

19 (*Ibid.*) Failure to adhere to any of the foregoing requirements can result in expulsion from the
20 CHP rotation system. (*Ibid.*)

21 As should be apparent, the level of state regulation over the towing industry is extensive.
22 Compliance with the wide variety of state laws is extremely difficult, and ensures that the towing
23 industry is professional and operates at a level sufficient to ensure the safety of the motoring
24 public.

25 2. The Benefits of the Local Regulation

26 The City's permit scheme does nothing to add to the safety of the public. While the scheme
27 allows for inspections, the City does not perform any inspections pursuant to that provision.
28 (Shah Dec. ¶8.) Even if they did conduct inspections, there is nothing to show that the

inspection would create any additional protection beyond the inspection that is already performed by the California Highway Patrol. The only benefit from the City's permit scheme appears to be that it generates substantial revenue for the City.

3. The Adverse Effect of the City's Permit Scheme Outweighs the Benefits to the Municipality

In this case, the City's scheme should be deemed preempted because

Where the state has provided a comprehensive scheme for examining and licensing members of a particular trade or profession, municipalities may not impose additional qualifications before issuing licenses to exercise the trade or profession within the city

(8 Witkin, Summary 10th (2005) Const Law, § 1000, p. 578.) The state has established a licensing scheme in that all tow operators are required to have a valid motor carrier permit. (Rev. & Tax. Code sec. 7232.) "The state license implies permission to the licensee to conduct his business at any place within the state." (*Horwith v. Fresno* (1946) 74 C.A.2d 443, 449.) However, the City's permit scheme impedes the ability of properly licensed tow operators from operating in and around the City of San Francisco without first obtaining an additional permit at great expense.

In *Bell v. City of Mountain View* (1977) 66 Cal.App.3d 332, 339, the court evaluated whether an ordinance was preempted under the "adverse effect" test. It found that it was not, because

The city's licensing ordinance avoids any interference with the free flow of inter-city commerce by exempting ambulances operating from a point outside the city to a destination within the city or proceeding through the city while en route to a destination outside the city.

However, in this case, the City's permit scheme directly interferes with the free flow of intercity commerce, because towing companies cannot conduct business effectively in and around the Bay Area without risking citation or impound of their vehicles. Accordingly, the City's permit scheme should be deemed preempted under state law.

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III. THE FEES AUTHORIZED BY THE PERMIT SCHEME ARE PREEMPTED BY STATE LAW

Under the permit scheme, various “fees” are charged as part of the application and renewal process. (SF Police Code secs. 3003, 3053.) Because permits are required not only for a towing firm, but all of its drivers, a typical business can incur thousands of dollars in expenses in obtaining the required permits. (Shah Dec. ¶¶5-7.)

Revenue and Taxation Code section 7233, enacted in 1996, prohibits the assessment of these fees on motor carriers of property (including tow trucks). That section provides:

No city, county, or city and county, shall assess, levy, or collect an excise or license tax of any kind, character, or description whatever upon the transportation business conducted on or after the effective date of this chapter, by any for-hire motor carrier of property.

Municipalities are thus prohibited from assessing or collecting “a license tax of any kind, character or description.” However, that is precisely what the city’s permit scheme does – it collects a tax under the guise of “fee” for the purpose of obtaining a license or “permit.”

Despite using the word “fee” in the permit scheme ordinances, there can be little doubt that the collection and assessment of the fee is prohibited under Revenue and Taxation Code section 7233. The language of that section is broad, and refers to “an excise or license tax of any kind, character, or description whatever.” These words demonstrate a legislative intent to prohibit the precise sort of economic burden imposed by the City’s permit scheme. It is frivolous to argue that a municipality could avoid the clear and broad prohibition of section 7233 by the simple expedient of labeling a tax a “fee.”

Such an argument would be untenable in any event in light of binding Supreme Court precedent regarding business license taxes. The high Court has made clear that the legislative designation of a particular tax (i.e. calling it a “fee” or “surcharge” is not determinative as to its nature. (*Weekes v. City of Oakland* (1978) 21 Cal.3d 386, 392.) Rather “[t]he character of a tax is ascertained from its incidents, not its label. (*Ibid*, citing *Ainsworth v. Bryant* (1949) 34 Cal.2d

1 465, 473.) In any event, it is worth noting that revenue and Taxation Code section 7233 appears
2 in Chapter 1 of Part 1.55 of Division 2 of the Revenue and Taxation Code, and the Chapter is
3 entitled "Motor Carriers of Property Permit Fee." Thus, this section of the code appears to use
4 the terms "fee" and "tax" interchangeably.

5 The Court also explained the common features of a business or license tax. "A business or
6 occupation tax is usually defined as a revenue-raising levy upon the privilege of doing business
7 within the taxing jurisdiction." (*Id.* at p. 394.) Moreover, payment of the tax is a condition
8 precedent to continued exercise of the privilege made subject to tax. (*Ibid.*, citing *Ingels v. Riley*
9 (1936) 5 Cal.2d 154, 159.)

10 The fees charged pursuant to the City's permit scheme are precisely the kind of business or
11 license tax described by the California Supreme Court in *Weekes*. Obtaining a permit (and the
12 payment of the associated fees) is a condition precedent to engaging in the towing business
13 within the jurisdiction of San Francisco. Accordingly, the fees are a tax and are prohibited by
14 Revenue and Taxation Code section 7233. This Court must therefore declare that the assessment
15 and collection of fees contemplated by the permit scheme is preempted by state law.

16 17 **IV. THE CITY IS IMPOUNDING TOW TRUCKS FOR VIOLATING THE PERMIT** 18 **SCHEME**

19
20 On March 30, 2010, a tow vehicle belonging to PP&M Towing and Recovery, Inc. was
21 impounded by the City because it lacked a current permit. (Whalen Dec. ¶4 and Exh. C, ¶ 6.)
22 On April 4, 2010, another PP&M Truck was stopped while towing a vehicle within the city and
23 it was impounded as well. (*Ibid.*) Other PP&M trucks have been stopped and threatened with
24 citation and/or impound. (*Ibid.*) CTTA members have been harassed and subject to citations,
25 fines, and in some cases the impound of their tow truck by the City and County of San Francisco
26 for failing to obtain a permit. (Hunter Dec. ¶10.) Many towers are aware of the recent policy of
27 impounding tow trucks that lack a permit. (Little Dec. ¶7; Berry Dec. ¶6; Little Dec. ¶13.) The
28 threat of impoundment of a tow truck is significant because impoundment deprives the tow truck

1 driver of his livelihood and deprives the towing firm of equipment essential to maintain its
2 operations.

3 The permit scheme does not authorize the impound of tow trucks. Moreover, the Fourth
4 Amendment to the United States Constitution protects against "unreasonable searches and
5 seizures." And the California Constitution contains a similar protection against unreasonable
6 seizures. (Cal. Const. Art. 1 § 13.)

7 The permit scheme prescribes the punishment for a violation: a misdemeanor violation with
8 a fine of up to \$500 (for drivers) or up to \$1000 (for towing firms) and/or imprisonment in
9 county jail for up to six months. (SF Police Code secs. 3012, 3064.) But the scheme does not
10 authorize the impound of any vehicles. All that appears is that vehicles operating in violation of
11 the permit scheme are *sometimes* impounded. The permit scheme sets forth no criteria for
12 exercising discretion as to whether to impound a tow truck or not.

13 If the permit scheme authorized impounds, an interesting debate could be had about the
14 constitutionality of such a provision. However, in the absence of any authorization whatsoever,
15 and the lack of any criteria specifying the conditions under which vehicles will be subject to
16 impound, any impound of a tow truck for violating the permit scheme must be declared
17 unreasonable.

18 The United States Supreme Court has declared that "[t]he touchstone of the Fourth
19 Amendment is reasonableness." (*Florida v. Jimeno* (1991) 500 U.S. 248, 250.) The analysis of
20 reasonableness is identical under California's parallel provision in Article 1, section 13.
21 (*Ingersoll v. Palmer* (1987) 43 Cal.3d 1321, 1329.) It is unreasonable to subject tow truck
22 drivers and towing firms to the possibility that their vehicles will be impounded on the whim of
23 the peace officer. No public purpose is served by impounding the vehicle, because the necessary
24 deterrence from violating the permit scheme is achieved by the threat of a fine and
25 imprisonment. Moreover, it must be noted that because the impound occurs prior to any
26 adjudication of the alleged permit violation, the driver and tow firm are denied the protection of
27 a neutral and detached magistrate evaluating the propriety of the impound.

28 At least one court has previously found that such impounds are unconstitutional.

seizure by a City agency of any outsider tow truck in New York City is prohibited where the only ground the agency reasonably has and can assert for the seizure is that the tow truck is not licensed by the City of New York.

(*Automobile Club of New York, Inc. v. Dykstra* (S.D.N.Y. 2006) 423 F.Supp.2d 279, 287.) In that case, however, the permit scheme expressly provided for impounds, so at least drivers and firms were on notice of the possibility of impounds and the conduct for which impound loomed as a consequence. (Id. at p. 286.)

In this case, however, there is no statutory notice of the possibility of impound, no hearing procedure to retrieve the vehicle, and no criteria for determining when impound is appropriate. For all of these reasons, it is patently unreasonable for the City to impound vehicles cited for a violation of the permit scheme. Accordingly, this Court should declare that no impounds of tow vehicles are constitutionally permitted for a simple violation of the permit scheme.

V. THE PERMIT SCHEME IS AN UNCONSTITUTIONAL VIOLATION OF THE COMMERCE CLAUSE

Article I, section 8, clause 3 of the United States Constitution provides that "The Congress shall have Power ... To regulate commerce ... among the several states...." The "dormant" commerce clause operates to prohibit states from enacting laws which burden interstate commerce.

Many towing firms provide towing services at great distance from their principal place of business. (Hunter Dec. ¶4.) Some towing firms tow or haul vehicles from California to other states, and from other states to California. This aspect of the business can involve towing cars out of San Francisco to other states, and into San Francisco from other states. (Little Dec. ¶4.) The City's permit scheme essentially imposes a "high toll" on towers passing through San Francisco en route to other states, or on interstate towing and hauling services that begin or end in San Francisco. (*Automobile Club of New York, Inc. v. Dykstra, supra*, 423 F.Supp.2d at p. 282.) This is a significant burden on interstate commerce, because the free flow of commerce

1 between the states is hampered when such costs are placed on the mere privilege of driving into,
2 out of, or through the City.

3 For the permit scheme to pass constitutional muster, it must be shown to apply evenhandedly
4 to effectuate a legitimate local public interest and that its effects on interstate commerce are only
5 incidental. (*Pike v. Bruce Church, Inc.* (1970) 397 U.S. 137, 142) The permit scheme cannot be
6 upheld if "the burden imposed upon such commerce is clearly excessive in relation to the
7 putative local benefits." (*Ibid.*)

8
9 If a legitimate local purpose is found, then the question becomes one of degree.
10 And the extent of the burden that will be tolerated will of course depend on the
11 nature of the local interest involved, and on whether it could be promoted as well
12 with a lesser impact on interstate activities.

13 (*Ibid.*)

14 In this case, there is no discernible legitimate public purpose other than raising revenue for
15 the City. As discussed previously, there is no public safety benefit from the scheme, and
16 certainly there is no benefit to be had from the collection of permit fees, other than to fill the
17 coffers of the City.

18 But even assuming some legitimate public purpose could be articulated, it is clear that the
19 "high toll" imposed on interstate towing and hauling could easily be avoided with the simple
20 expedient of eliminating the fees required for the permit. In other words, if the City does have a
21 desire to ensure towing firms and tow truck drivers have permits, they can do so without
22 imposing a substantial economic hardship on those engaged in interstate commerce by simply
23 issuing permits without collecting a fee. Whatever legitimate public purpose the City may enjoy
24 from their permit scheme should not be subsidized by those towing firms who are simply
25 practicing their constitutionally protected right to engage in interstate commerce. Like the
26 Federal District Court in *Automobile Club of New York, Inc. v. Dykstra, supra*, 423 F.Supp.2d at
27 p. 285, this Court should invalidate the fees because they create a "marked interference with
28 interstate and intrastate commerce."

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VI. DECLARATORY AND INJUNCTIVE RELIEF IS REQUIRED

In this action, Plaintiff CTTA seeks declaratory and injunctive relief. Specifically, Plaintiff seeks a declaration that the permit scheme is preempted by both state and federal law, that any impounds pursuant to the scheme are unconstitutional, and that the fees associated with the permit scheme are an unconstitutional burden on interstate commerce. In addition, Plaintiff seeks an order enjoining the enforcement of the permit scheme in light of the above infirmities.

The state and its political subdivisions, including municipalities, may be sued under Code of Civil Procedure section 1060, the Declaratory Relief Act. (*Tehachapi-Cummings County Water Dist., v. Armstrong* (1975) 49 Cal. App. 3d 992, 1000.) Moreover, it is settled that questions of statutory interpretation are traditionally reviewable in a declaratory relief action. (*Walker v. Los Angeles County* (1961) 55 Cal. 2d 626, 637.) Furthermore,

A complaint for declaratory relief is legally sufficient if it sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the parties under a written instrument or with respect to property and requests that the rights and duties of the parties be adjudged by the court.

(*Cardellini v. Casey* (1986) 181 Cal. App. 3d 389, 395.) The requirements are met in this case because Plaintiff has alleged facts showing an actual controversy between its member towing companies and the City with respect to the interpretation, legality, and enforceability of the permit scheme. CTTA members have a property interest in their business and their tow trucks, both of which are jeopardized by the permit scheme.

This Court's guidance is needed so that CTTA members can know their legal rights and duties, and can make informed business decisions based upon the law. The present uncertainty as to whether the permit scheme is legal creates huge significant economic hardship on CTTA members. Some members choose to obtain the permits (at a significant cost) which puts them at a competitive disadvantage to their competitors. Others elect not to purchase the permits, which puts them at risk of citation, fine, imprisonment and impound of their vehicles. It also inhibits their ability to do business in and around the City.

1 Prohibitory injunctive relief is required in this case to stop the ongoing enforcement of the
2 legally invalid permit scheme. "Preventive relief is given by prohibiting a party from doing that
3 which ought not to be done." (Civil Code sec. 3368.) It is well settled that where the
4 enforcement of a statute may cause irreparable injury, the injured party may seek to enjoin its
5 enforcement. (*McKay Jewelers, Inc. v. Bowron* (1942) 19 Cal.2d 595, 599.) Moreover,
6 injunctive relief may be granted against illegal enforcement of valid statutes. (*Startrack, Inc. v.*
7 *County of Los Angeles* (1976) 65 Cal.App.3d 451, 457.)

8 A preliminary injunction may issue if it is "reasonably probable that the moving party will
9 prevail on the merits." (*San Francisco Newspaper Printing Co., Inc. v. Superior Court (Miller)*
10 (1985) 170 Cal.App.3d 438, 442.) For all of the reasons stated in the preceding arguments,
11 plaintiff will likely prevail. There is settled decisional law from both the California Supreme
12 Court and the United States Supreme Court unambiguously supporting the arguments set forth in
13 the complaint. Moreover, the balance of equities favors the plaintiff. If enforcement of the
14 permit scheme is allowed to continue, plaintiffs will continue to suffer injury, whereas as the
15 City loses nothing from the cessation of enforcement. (See, e.g., *Shoemaker v. County of Los*
16 *Angeles* (1995) 37 Cal.App.4th 618, 633.) None of its rights will be harmed. The most that can
17 be said is that the City may suffer some loss of revenue in permit fees, but that can easily be
18 recouped if the City ultimately prevails. Accordingly, a preliminary and permanent injunction
19 should issue.

CONCLUSION

WHEREFORE, Plaintiff CTTA respectfully prays that:

1. This Court issue a declaration that the City's permit scheme is preempted by federal law;
2. This Court issue a declaration that the City's permit scheme is preempted by state law;
3. This Court issue a declaration that the impounds of tow cars alleged to be in violation of the City's permit scheme is unconstitutional;
4. This court issue a declaration that the permit scheme is an unconstitutional regulation of interstate commerce;
5. This Court issue a preliminary and permanent injunction prohibiting Defendant from enforcing the permit scheme;
6. Plaintiff be awarded attorneys fees and costs of suit incurred in this action.

THE LAW OFFICES OF BROOKS ELLISON

Dated: 7-13-2010


PATRICK J. WHALEN

Attorneys for Plaintiff
CALIFORNIA TOW TRUCK
ASSOCIATION

COPY

1 **BROOKS ELLISON**
2 State Bar No. 122705
3 **PATRICK J. WHALEN**
4 State Bar No. 173489
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10 E-mail: attorneys@ellisonlawoffices.com

11 Attorneys for Plaintiff

12 **SUPERIOR COURT OF CALIFORNIA**
13 **COUNTY OF SAN FRANCISCO**

14 **CALIFORNIA TOW TRUCK ASSOCIATION**

15 Plaintiff,

16 vs.

17 **CITY AND COUNTY OF SAN FRANCISCO**
18 and DOES 1-50

19 Defendants.

20 Case No. CGC-10-501458

21 **DECLARATION OF BOB BERRY**
22 **IN SUPPORT OF VERIFIED**
23 **COMPLAINT FOR DECLARATORY**
24 **AND INJUNCTIVE RELIEF**
25 **REGARDING VALIDITY AND**
26 **ENFORCEMENT OF SAN**
27 **FRANCISCO**
28 **POLICE CODE SECTIONS 3000 ET**
SEQ. AND 3050 ET SEQ.

(Code of Civ. Proc. §§ 525 and 1060)

Date: August 19, 2010
Time: 9:30 a.m.
Dept.: 302

I, Bob Berry, declare as follows:

1. I am the owner and President of Berry Brothers Towing and Transport, Inc. My company's principal place of business is 598 5th Street in Oakland, California, 94609.

ENDORSED
FILED
Superior Court of California
County of San Francisco

JUL 13 2010

CLERK OF THE COURT

BY: WESLEY RAMIREZ
Deputy Clerk

BY FACSIMILE

1 BROOKS ELLISON
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10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 CALIFORNIA TOW TRUCK ASSOCIATION

Case No. CGC-10-501458

13 Plaintiff,

14 vs.

15 CITY AND COUNTY OF SAN FRANCISCO
and DOES 1-50

16 Defendants.
17
18
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21
22

**DECLARATION OF BOB BERRY
IN SUPPORT OF VERIFIED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
REGARDING VALIDITY AND
ENFORCEMENT OF SAN FRANCISCO
POLICE CODE SECTIONS 3000 ET
SEQ. AND 3050 ET SEQ.**

(Code of Civ. Proc. §§ 525 and 1060)

Date: August 19, 2010
Time: 9:30 a.m.
Dept.: 302

23 I, Bob Berry, declare as follows:

- 24 1. I am the owner and President of Berry Brothers Towing and Transport, Inc. My
25 company's principal place of business is 598 5th Street in Oakland, California, 94609.
26 2. My company operates a fleet of 14 tow trucks and employs 12 drivers. I perform towing
27 services throughout the greater Bay Area and my drivers regularly travel through various cities
28 and counties in the course of their regular duties.

1 3. All of my vehicles are subject to inspection by the California Highway Patrol and are
2 regularly inspected by them. All of my drivers are subject to background checks by the
3 California Highway Patrol and all have passed those checks. In addition, some of my drivers are
4 subject to extensive background checks by the Department of Justice in order to transport
5 hazardous materials.

6 4. As part of my business, my drivers tow cars from one location outside of San Francisco
7 to another location outside of San Francisco, but are required to drive through San Francisco to
8 reach their destination. My drivers also tow cars from locations outside of San Francisco to
9 destinations within the City and County of San Francisco, which requires them to drive into San
10 Francisco. My drivers also tow cars from locations within San Francisco to destinations outside
11 of San Francisco, which also requires them to drive into San Francisco. My drivers also
12 occasionally need to drive through San Francisco in their tow truck to get to a destination outside
13 of San Francisco to perform tow services.

14 5. I am aware that the City and County of San Francisco has an ordinance that prohibits any
15 person from driving or operating a tow car within the City and County of San Francisco without
16 first obtaining a permit from the Chief of Police. I am also aware that the City and County of
17 San Francisco has an ordinance that prohibits any person from engaging in business as a tow car
18 firm within the City and County of San Francisco without first obtaining a permit from the Chief
19 of Police.

20 6. I am aware that the City and County of San Francisco has recently impounded several
21 tow trucks owned and operated by some of my colleagues in the towing business because they
22 failed to obtain the requisite permits.

23 7. I have chosen not to obtain a permit from the City and County of San Francisco. It is my
24 understanding that the permit process is expensive, with application fees and taxes totaling
25 several thousand dollars per firm, with additional fees imposed for each additional truck or driver
26 for which a permit is obtained. If I had to pay the permit fees, it would directly impact the price
27 of the towing services I perform for my customers.

28

1 8. Because I do not have a permit, my drivers are faced with the difficult choice of driving
2 through San Francisco and facing citation or impound, or taking a longer route through the East
3 Bay to their destination. As a result, the San Francisco ordinance directly impacts the route for
4 my drivers, and directly impacts their ability to perform towing services, because avoiding the
5 City of San Francisco can result in significantly longer response times for customers.

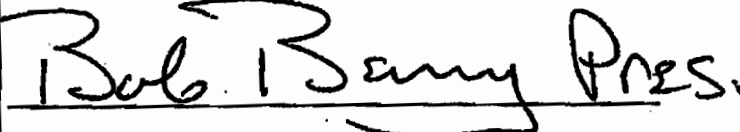
6 9. The ordinance has also directly inhibited the growth of my business in the City and
7 County of San Francisco, as I have refused to enter into contracts with some clients for fear of
8 putting my drivers and tow trucks at risk.

9 10. I have a valid motor carrier permit through the Department of Motor Vehicles. It is
10 renewed each year upon payment of a fee to State of California. The motor carrier permit
11 authorizes me to transport of property throughout the State of California, including any city,
12 county, or other political subdivision of the State. The motor carrier permit cannot be obtained
13 without proof of liability insurance. In addition, companies with employees are required to have
14 proof of workers compensation insurance in order to obtain a motor carrier permit.

15 11. My drivers are required to stop at truck scales on highways, and are all subject to a
16 random enforcement program implemented by the California Highway Patrol during which they
17 must provide a valid drivers license, registration, and insurance, as well as a safety inspection of
18 their vehicle.

19
20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct and based on my personal knowledge, and if called to testify to
22 these facts, I would do so competently and truthfully.

23 Executed this 30th day of June, 2010, in Oakland, California.

24
25  Bob Berry Pres.

26 Bob Berry
27
28

COPY

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Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CALIFORNIA TOW TRUCK ASSOCIATION

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO
and DOES 1-50

Defendants.

Case No. CGC-10-501458

**DECLARATION OF JEFF HUNTER IN
SUPPORT OF VERIFIED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF REGARDING
VALIDITY AND ENFORCEMENT OF
SAN FRANCISCO POLICE CODE
SECTIONS 3000 ET SEQ. AND 3050 ET
SEQ.**

(Code of Civ. Proc. §§ 525 and 1060)

Date: August 19, 2010
Time: 9:30 a.m.
Dept.: 302

I, Jeff Hunter, declare as follows:

1. I am the Executive Director of the California Tow Truck Association ("CTTA"). The mission of CTTA is to advance the professional interests of towing companies and enhance their ability to serve law enforcement and the motoring public.

ENDORSED
FILED
Superior Court of California

JUL 13 2010

CLERK OF THE COURT

BY: WESLEY RAMIREZ

Deputy Clerk

BY FACSIMILE

1 BROOKS ELLISON
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7 Attorneys for Plaintiff
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10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 CALIFORNIA TOW TRUCK ASSOCIATION

13 Plaintiff,

14 vs.

15 CITY AND COUNTY OF SAN FRANCISCO
16 and DOES 1-50

17 Defendants.
18
19

Case No. CGC-10-501458

**DECLARATION OF JEFF HUNTER IN
SUPPORT OF VERIFIED COMPLAINT
FOR DECLARATORY AND
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VALIDITY AND ENFORCEMENT OF
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(Code of Civ. Proc. §§ 525 and 1060)

20 Date: August 19, 2010
Time: 9:30 a.m.
21 Dept.: 302
22

23 I, Jeff Hunter, declare as follows:

24 1. I am the Executive Director of the California Tow Truck Association ("CTTA"). The
25 mission of CTTA is to advance the professional interests of towing companies and enhance their
26 ability to serve law enforcement and the motoring public.
27
28

2. CTTA's is a nonprofit corporation organized and existing under the laws of the state of California, with its principal place of business in Palm Springs, in the County of Riverside, California.

3. CTTA has approximately 1,000 member companies doing business throughout the state of California. Member companies range in size from small family-run businesses with only one or two tow trucks to large companies with fleets of dozens of tow trucks.

4. While all towing companies have a principal place of business, many provide towing services at great distance from their principal place of business. Their operations are not restricted to only the city or county in which their principal place of business is located. Most of CTTA's members conduct towing operations in multiple counties and in and around dozens of cities throughout California.

5. It is not uncommon for a tow operator to pick up a vehicle in one city, tow it through one or more cities or counties, and deliver to a residence, storage yard, salvage lot, or repair facility in a different city or county.

6. I am personally aware of the fact that many CTTA members based in and around the greater Bay Area, but outside of the City and County of San Francisco, regularly conduct towing operations that requires them to drive into and through the City and County of San Francisco. This is true even if the vehicle for which they are providing service is not located within the boundaries of the City and County of San Francisco.

7. CTTA makes safety training available to all of its members and their employees. Our training programs span several days and include such topics as:

Safe Driving Practices

Safe Towing Capacity

Hazardous Materials

Appearance & Conduct

Incident Management

Safety during road service

Impounded and stored vehicle protocol

1 General towing precautions

2 Release Procedures

3 Customer Service

4
5 Our training classes provide both classroom and hands on instruction, and all courses conclude
6 with a rigorous testing process that training participants must pass before getting certification.

7 8. CTTA members who perform heavy duty towing operating 3 axle trucks in excess of
8 10,000 GVWR (gross vehicle weight rating) or operating vehicle combinations in excess of 40
9 feet, are subject to Biennial Inspection Terminal ("BIT") by the California Highway Patrol.
10 They are also required to undergo drug and alcohol testing.

11 9. All towing companies are required to have a valid motor carrier permit which cannot be
12 obtained without proof of liability insurance. In addition, companies with employees are
13 required to have proof of workers compensation insurance in order to obtain a motor carrier
14 permit. All tow trucks are required to stop at truck scales on highways, and are all subject to a
15 random enforcement program implemented by the California Highway Patrol during which they
16 must provide a valid driver license, registration, motor carrier permit and insurance, as well as a
17 safety inspection of their vehicle.

18 10. CTTA Members have been harassed and subject to citations, fines, and in some cases the
19 impound of their tow truck by the City and County of San Francisco for failing to obtain a
20 permit.

21 11. The ability of CTTA members to conduct their business is adversely affected by the San
22 Francisco ordinance, because it subjects them to great uncertainty as to whether they are able to
23 conduct business in, around, and through the City and County of San Francisco.

24 12. The vast majority of CTTA members participate in the California Highway Patrol
25 ("CHP") rotation system. CHP requires all participants to sign a detailed Tow Service
26 Agreement ("TSA"). A true and correct copy of the 2009-10 TSA is attached to this declaration
27 as Exhibit A. Pursuant to the TSA, tow operators must

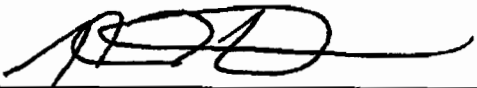
- have a minimum of 3 years experience;
- participate in a drug and alcohol testing program;

- maintain minimum staffing levels and hours of operation;
- meet maximum response times;
- have an adequate storage facility;
- meet minimum equipment specifications;
- allow CHP to inspect all trucks at least one per year;
- charge reasonable rates;
- maintain minimum levels of insurance;
- adhere to a code of conduct;

Failure to adhere to any of the foregoing requirements can result in expulsion from the CHP rotation system.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and based on my personal knowledge, and if called to testify to these facts, I would do so competently and truthfully.

Executed this 30th day of June, 2010, in Palm Springs, California.



Jeff Hunter

COPY

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Attorneys for Plaintiff

ENDORSED
FILED
Superior Court of California

JUL 13 2010

CLERK OF THE COURT
BY: WESLEY RAMIREZ
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

BY FACSIMILE

CALIFORNIA TOW TRUCK ASSOCIATION

Case No. CGC-10-501458

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO
and DOES 1-50

Defendants.

DECLARATION OF GEORGE LITTLE
IN SUPPORT OF VERIFIED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
REGARDING VALIDITY AND
ENFORCEMENT OF SAN

FRANCISCO
POLICE CODE SECTIONS 3000 ET
SEQ. AND 3050 ET SEQ.

(Code of Civ. Proc. §§ 525 and 1060)

Date: August 19, 2010
Time: 9:30 a.m.
Dept.: 302

I, George Little, declare as follows:

1. I am the owner and President of College Oak Towing and COT Transportation, Inc. The principal place of business for both companies is 4125 Winters Street, Sacramento, California 95838.

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6 Attorneys for Plaintiff
7
8

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11

12 CALIFORNIA TOW TRUCK ASSOCIATION

Case No. CGC-10-501458

13 Plaintiff,

14 vs.

15 CITY AND COUNTY OF SAN FRANCISCO
and DOES 1-50

16 Defendants.
17
18
19
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**DECLARATION OF GEORGE LITTLE
IN SUPPORT OF VERIFIED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
REGARDING VALIDITY AND
ENFORCEMENT OF SAN FRANCISCO
POLICE CODE SECTIONS 3000 ET
SEQ. AND 3050 ET SEQ.**

(Code of Civ. Proc. §§ 525 and 1060)

Date: August 19, 2010
Time: 9:30 a.m.
Dept.: 302

23 I, George Little, declare as follows:

24 1. I am the owner and President of College Oak Towing and COT Transportation, Inc. The
25 principal place of business for both companies is 4125 Winters Street, Sacramento, California
26 95838.

27 2. My companies operate a fleet of approximately 22 tow trucks and 8 tractor trailers and
28 employ approximately 30 drivers. I perform towing services throughout California, Arizona,

1 Oregon, and Nevada, and I perform hauling services of rolling stock throughout the United
2 States and my drivers regularly travel through various states, as well through various cities and
3 counties within California in the course of their regular duties.

4 3. All of my vehicles are subject to inspection by the California Highway Patrol and are
5 regularly inspected by them. All of my drivers are subject to background checks by the
6 California Highway Patrol and all have passed those checks. In addition, some of my drivers are
7 subject to extensive background checks by the Department of Justice in order to transport
8 hazardous materials.

9 4. As part of my business, I perform towing services and hauling services that involve
10 towing vehicles from within the State of California to other states. I also perform towing
11 services that involve towing vehicles from other states into California. Part of my business
12 involves towing or hauling vehicles out of San Francisco to locations in other states, as well as
13 towing or hauling vehicles from other states into San Francisco.

14 5. In addition to my interstate services, my drivers tow or haul cars, trucks, buses, and
15 motorhomes from one location outside of San Francisco to another location outside of San
16 Francisco, but are required to drive through San Francisco to reach their destination. My drivers
17 also tow cars and commercial vehicles from locations outside of San Francisco to destinations
18 within the City and County of San Francisco, which requires them to drive into San Francisco.
19 My drivers also tow vehicles from locations within San Francisco to destinations outside of San
20 Francisco, which also requires them to drive into San Francisco. My drivers also occasionally
21 need to drive through San Francisco in their tow truck or tractor trailer to get to a destination
22 outside of San Francisco to perform tow services.

23 6. I am aware that the City and County of San Francisco has an ordinance that prohibits any
24 person from driving or operating a tow car or tractor trailer within the City and County of San
25 Francisco without first obtaining a permit from the Chief of Police. I am also aware that the
26 City and County of San Francisco has an ordinance that prohibits any person from engaging in
27 business as a tow car firm within the City and County of San Francisco without first obtaining a
28 permit from the Chief of Police.

1 7. I am aware that the City and County of San Francisco has recently impounded several
2 tow trucks owned and operated by some of my colleagues in the towing business because they
3 failed to obtain the requisite permits.

4 8. I have chosen not to obtain a permit from the City and County of San Francisco. It is my
5 understanding that the permit process is expensive, with application fees and taxes totaling
6 several thousand dollars per firm, with additional fees imposed for each additional truck or driver
7 for which a permit is obtained. If I had to pay the permit fees, it would directly impact the price
8 of the towing and hauling services I perform for my customers.

9 9. Because I do not have a permit, my drivers are faced with the difficult choice of driving
10 through San Francisco and facing citation or impound, or taking a longer route through the East
11 Bay to their destination. As a result, the San Francisco ordinance directly impacts the route for
12 my drivers, and directly impacts their ability to perform towing and hauling services, because
13 avoiding the City of San Francisco can result in significantly longer response times for
14 customers.

15 10. The ordinance has also directly inhibited the growth of my business in the City and
16 County of San Francisco, as I have refused to enter into contracts with some clients for fear of
17 putting my drivers and tow trucks at risk.

18 11. The ordinance hampers my ability to compete effectively with other interstate towing or
19 hauling businesses, because the ordinance represents an additional cost on my interstate
20 transportation services whenever my customers require their vehicles to be towed to, from, or
21 through San Francisco. San Francisco's population, commerce, and geographic location make it
22 a relatively common starting or destination point for interstate towing and hauling services. In
23 addition, the fact that both State Route 101 and Interstate 80 run through the city makes it likely
24 that interstate towing services will require traveling to, from, or through the city.

25 12. I have a valid motor carrier permit through the Department of Motor Vehicles. It is
26 renewed each year upon payment of a fee to State of California. The motor carrier permit
27 authorizes me to transport property throughout the State of California, including any city, county,
28 or other political subdivision of the State. The motor carrier permit cannot be obtained without

JUL-1-2010 12:09P FROM:COLLEGE OAK TOW
06-30-10:01:15PM

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TO:4465346

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b/ b

1 proof of liability insurance. In addition, companies with employees are required to have proof of
2 workers compensation insurance in order to obtain a motor carrier permit. In addition, pursuant
3 to certain agreements, with law enforcement agencies, my tow trucks are required to have "on-
4 hook" insurance coverage with a minimum of \$50,000 for small tow trucks and \$250,000 for
5 larger tow trucks. Tractor trailers are required to have cargo insurance.

6 13. My drivers are required to stop at truck scales on highways, and are all subject to a
7 random enforcement program implemented by the California Highway Patrol during which they
8 must provide a valid drivers license, registration, and insurance, as well as a safety inspection of
9 their vehicle. All of my heavy duty drivers are also required to enter into a pull notice program
10 with the Department of Motor Vehicles which monitors any activity on their driver license and
11 notifies me of any ticket, or other violation. They are also required to participate in a drug and
12 alcohol testing program. My interstate vehicles are required to have a United States Department
13 of Transportation Number in addition to a the CA number accompanying the motor carrier
14 permit.

15
16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct and based on my personal knowledge, and if called to testify to
18 these facts, I would do so competently and truthfully.

19 Executed this 30 day of June, 2010, in Oakland, California.

20
21 
22 George Little
23
24
25
26
27
28

COPY

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Attorneys for Plaintiff

EMPOWERED
FILED
Superior Court of California
San Francisco

JUL 13 2010

CLERK OF THE COURT
BY: WESLEY RAMIREZ
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

BY FACSIMILE

CALIFORNIA TOW TRUCK ASSOCIATION

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO
and DOES 1-50

Defendants.

Case No. CGC-10-501458

**DECLARATION OF KHURRAM SHAH
IN SUPPORT OF VERIFIED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
REGARDING VALIDITY AND
ENFORCEMENT OF SAN
FRANCISCO
POLICE CODE SECTIONS 3000 ET
SEQ. AND 3050 ET SEQ.**

(Code of Civ. Proc. §§ 525 and 1060)

Date: August 19, 2010
Time: 9:30 a.m.
Dept.: 302

I, Khurram Shah, declare as follows:

- I am the owner and President of K and S Towing and Transport, Inc. My company's principal place of business is 2780 Willow Pass Road in Bay Point, California, 94565.

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6 Attorneys for Plaintiff

7
8
9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 CALIFORNIA TOW TRUCK ASSOCIATION

Case No. CGC-10-501458

12
13 Plaintiff,

14 vs.

15 CITY AND COUNTY OF SAN FRANCISCO
and DOES 1-50

16 Defendants.
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**DECLARATION OF KHURRAM SHAH
IN SUPPORT OF VERIFIED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
REGARDING VALIDITY AND
ENFORCEMENT OF SAN FRANCISCO
POLICE CODE SECTIONS 3000 ET
SEQ. AND 3050 ET SEQ.**

(Code of Civ. Proc. §§ 525 and 1060)

Date: August 19, 2010
Time: 9:30 a.m.
Dept.: 302

23 I, Khurram Shah, declare as follows:

- 24 1. I am the owner and President of K and S Towing and Transport, Inc. My company's
25 principal place of business is 2780 Willow Pass Road in Bay Point, California, 94565.
26 2. My company operates a fleet of 39 tow trucks and employs 40 drivers. I perform towing
27 services throughout Northern California including the greater Bay Area and my drivers regularly
28 travel through various cities and counties in the course of their regular duties.

1 3. All of my vehicles are subject to inspection by the California Highway Patrol and are
2 regularly inspected by them. All of my drivers are subject to background checks by the
3 California Highway Patrol and all have passed those checks. In addition, some of my drivers are
4 subject to extensive background checks by the Department of Justice in order to transport
5 hazardous materials.

6 4. As part of my business, my drivers tow cars from one location outside of San Francisco
7 to another location outside of San Francisco, but are required to drive through San Francisco to
8 reach their destination. My drivers also tow cars from locations outside of San Francisco to
9 destinations within the City and County of San Francisco, which requires them to drive into San
10 Francisco. My drivers also tow cars from locations within San Francisco to destinations outside
11 of San Francisco, which also requires them to drive into San Francisco. My drivers also
12 occasionally need to drive through San Francisco in their tow truck to get to a destination outside
13 of San Francisco to perform tow services.

14 5. Pursuant to the Municipal Code of the City and County of San Francisco, I have obtained
15 a tow car permit for my business. In order to obtain this permit, I had to pay an initial
16 application fee of \$785 to the Police Department. Once I received preliminary approval, I was
17 required to pay an additional \$1006.50 for a "license tax" to the City of San Francisco. It is my
18 understanding that that tax covered three of my trucks.

19 6. In addition, I had to pay \$360 to obtain a permit for each driver. I added three drivers for
20 a total of \$1080.00. Each driver had to take time out of their job, get passport photos, obtain
21 their drivers license printout from DMV, and then attend a hearing. Once they were approved, I
22 had to pay an additional \$45 for an identification card for each driver, for a total of \$135.

23 7. To date I have paid more than \$3000 to obtain a permit for my firm and three of my
24 drivers. These fees are subject to renewal on an annual basis.

25 8. Since initiating the permit application process, neither my business premises nor any of
26 my trucks have ever been subjected to any safety inspections by the City and County of San
27 Francisco.
28

1 9. My workload in San Francisco is such that I need to add six more drivers and trucks to
2 maintain my business. I will incur additional costs in obtaining permits for these additional
3 drivers.

4 10. Because of the costs of obtaining the permits, my cost of doing business has significantly
5 increased. While my current customer base I subject to long-term contracts, my present intention
6 is to adjust my pricing structure to reflect the increased cost of the San Francisco permits as soon
7 as those contracts are up for renewal.

8 11. Because only a small portion of my drivers and trucks are properly permitted, I am forced
9 to adjust the routes for my other drivers. When they are responding to calls that would require
10 them to pass through the City and County of San Francisco, they have to take an alternate route
11 to avoid entering the city without a permit.

12 12. As a result of the impact on the routes they are permitted to drive, the service to my
13 customers is directly impacted. The longer routes result in delayed response times and create the
14 need for additional staffing in order to provide the service for which my customers have
15 contracted.

16 13. I am aware that the City and County of San Francisco has recently impounded several
17 tow trucks owned and operated by some of my colleagues in the towing business because they
18 failed to obtain the requisite permits.

19 14. The ordinance has also directly inhibited the growth of my business in the City and
20 County of San Francisco, as I have refused to enter into contracts with some clients because I do
21 not presently have the ability to obtain the necessary permits to service those prospective clients.

22 15. I have a valid motor carrier permit through the Department of Motor Vehicles. It is
23 renewed each year upon payment of a fee to State of California. The motor carrier permit
24 authorizes me to transport of property throughout the State of California, including any city,
25 county, or other political subdivision of the State. The motor carrier permit cannot be obtained
26 without proof of liability insurance. In addition, companies with employees are required to have
27 proof of workers compensation insurance in order to obtain a motor carrier permit.

1 16. My drivers are required to stop at truck scales on highways, and are all subject to a
2 random enforcement program implemented by the California Highway Patrol during which they
3 must provide a valid drivers license, registration, and insurance, as well as a safety inspection of
4 their vehicle.

5
6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct and based on my personal knowledge, and if called to testify to
8 these facts, I would do so competently and truthfully.

9
10 Executed this ____ day of June, 2010, in Bay Point, California.

11
12 _____
13 Khurram Shah
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COPY

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7 Attorneys for Plaintiff
8

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 CALIFORNIA TOW TRUCK ASSOCIATION
12

13 Plaintiff,
14

15 vs.
16

17 CITY AND COUNTY OF SAN FRANCISCO
18 and DOES 1-50
19

20 Defendants.
21
22
23

ENDORSED
FILED
Superior Court of California

JUL 13 2010

CLERK OF THE COURT

BY: WESLEY RAMIREZ

Deputy Clerk

Case No. CGC-10-501458

**DECLARATION OF PATRICK
WHALEN IN SUPPORT OF VERIFIED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
REGARDING VALIDITY AND
ENFORCEMENT OF SAN**

**FRANCISCO
POLICE CODE SECTIONS 3000 ET
SEQ. AND 3050 ET SEQ.**

(Code of Civ. Proc. §§ 525 and 1060)

Date: August 19, 2010

Time: 9:30 a.m.

Dept.: 302

24 I, Patrick Whalen, declare as follows:

- 25 1. I am the attorney for the plaintiff/petitioner in the above entitled action.
26 2. Attached to this declaration as Exhibit A is a true and correct copy of Article 30 of the
27 City and County of San Francisco Police Code beginning with section 3000 and which concerns
28 permits for tow drivers.

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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 CALIFORNIA TOW TRUCK ASSOCIATION
12

13 Plaintiff,

14 vs.

15 CITY AND COUNTY OF SAN FRANCISCO
and DOES 1-50
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17 Defendants.
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Case No. CGC-10-501458

**DECLARATION OF PATRICK
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(Code of Civ. Proc. §§ 525 and 1060)

Date: August 19, 2010
Time: 9:30 a.m.
Dept.: 302

23 I, Patrick Whalen, declare as follows:

- 24 1. I am the attorney for the plaintiff/petitioner in the above entitled action.
25 2. Attached to this declaration as Exhibit A is a true and correct copy of Article 30 of the
26 City and County of San Francisco Police Code beginning with section 3000 and which concerns
27 permits for tow drivers.
28

1 3. Attached to this declaration as Exhibit B is a true and correct copy of Article 30.1 of the
2 City and County of San Francisco Police Code beginning with section 3050 and which concerns
3 permits for tow car firms.

4 4. Attached to this Declaration as Exhibit C is a true and correct copy of a Declaration of
5 Peter Koehler which was previously submitted to the United States District Court, Northern
6 District of California. Petitioner/Plaintiff is not a party to that litigation, and obtained the
7 Declaration of Peter Koehler from the federal court's file in that case.

8
9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct and based on my personal knowledge, and if called to testify to
11 these facts, I would do so competently and truthfully.

12 Executed this 30th day of June, 2010, in Sacramento, California.

13
14 
15 Patrick Whalen
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